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ment under the previous Act was pronounced, Lord

Mansfield saying : " Here is a right vested, and it is

not to be imagined that the legislature could by gen-

eral words mean to take it away from the person in

whom it was so legally rested, and who had been at a

pending suits competent to testify in their own behalf.

In Willard vs. Harvey, the Court cautiously say,

"But if a law though in form applying to the remedy

only practically deprives either party of any vested

were divided, a dissenting opinion of great force be-

ing given by Chief Justice Bell, and the decision cer-

tainly goes beyond the limits laid down by that

Court in previous cases. The law also which prevent-

ed parties from testifying for themselves was no stat-

Lukeman vs. Moore, 32 N. H. 413. An Act repeal

ute rule but merely an arbitrary rule of practice.

unimpaired, and some adequate means are secured."

judgment. Per Bronson, C. J. : "For all honest and

say that the debt shall be blotted out as to deny to

the creditor all means of enforcing payment. I have

not overlooked the distinction which often exists be

tion is of a substantial nature, and may have a con

The following are decisions of the Supreme Court

very extreme of that class of arbitrary and despetic

Recessor or, Kinnie, T. Hore, 311, (1843). A power

two-thirds of their appraised value, is unconstitution

obligation of the contract. "The rights of a party

may in effect be destroyed by denying a remedy alto-

gether, or may be seriously impaired by bardening

the proceedings with new conditions and restrictions,

so as to make the remedy burdly worth pursuing

And no one we presume, would say that there is any

claring a particular contract or class of contracts to

be abrogated and void, and one which took away all

remedy, or encumbered it with conditions that render-

Storges er. Cronminshield, 4 W. 191. A State in-

solvent law is unconstitutional so far as it undertakes

McCracken vs. Hayward, 2 How. 613. So of a State

tion for prior judgments or contract debts for less

than two-thirds of its appraised value. Fer Car:

"Any law, which in its operation amounts to a denial

or obstruction of the rights accraing by a contract

though professing to set only on the remedy, is direct

ly obnexious to the prohibition of the Constitution."

The Pennsylvania law, so for as appears by the

authorities at head, is expressed in Bedford or. Shill-

in all cores of vacant lands, and of a tender of con-

refuse the same he "shall receive no benefit from the

favor. His words are these :

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grant a libel for dirorce. The libel was filed

and return of service, the Justices of this Court had jurisdiction at Chambers to grant divorces. July 18, 1870, an Act was approved by the King, which by its terms took effect from publication, repealing "at Acts and parts of Acts anthorizing divorce causes to be heard at Chambers, and all Acts and parts of Acts inconsistent" therewith. Section 1 of this Act declares that " Divorces from the bond of matrimony call be granted for the causes hereinafter set forth, and for no other;" Section 2, that if the parties shall have lived together as husband and wife in Oahn, the Supreme Court shall exercise jurisdiction. But all such cases shall be regularly entered on the Calendar like other civil actions. No such case shall be heard at Chambers and no consent of parties shall warrant the Coprts in hearing divorce causes, or any matter connected therewith, except during regular sessions in the nublic Court rooms. * * In all proceedings before the Supreme Court connected with divorce causes the presence of at least two of the Justices

shall be required." Section 3 provides that "all proceedings for divorce snall be commenced by libel;" that process shall be made returnable at the term "next after the expiration of forty days from the filing of the same," and that the Court shall not entertain jurisdiction of such libel," unless personal service shall have been made " more than thirty cays before the first day of the term to which the same shall be returnsble, except as is provided in the following Section." By Section 4, if personal service can not be made and the respondent can not be found, the case shall be continued until the next term, and an attested copy of the Summons meanwhile shall be printed in the Government Gazerre and AU OKOA. By Section 6, no divorce for adultery shall be granted "where the libe was not filed within one year after the discovery by the libel-

lant of the offence charged." There are numerous other provisions, but these contain all that affect the question of jurisdiction. Under the new Act, the Attorney-General is entitled to be heard "to establish the fact of collasion, or the existence of testimony not produced." He was heard, in opposition to the authority of the Court at Chambers to grant the prayer of the The following are the enactments bearing on the case : " No law shall have any retrospective operation." Sect. 5, Civil Code. "The repeat of any law shall in no case affect any not done or right accraing, accraed, acquired or established, or any proceeding had or commenced in any civil

case before the time when the said repeal shall take effect." Ib., Sect. 22. "No suit or prose-But decent respect for legislative wisdom and cution pending at the time of the repeal of any law, for any offence committed or forfeiture incurred under the law so repealed shall in any case be affected by such repeal." Ib., Sect. 23. questions of law arising in any civil cause shall be decided by the Court or Judge before whom the matter is pending." Ib., Sect. 822. "The several Courts in their decisions shall have due

regard to vested rights." Ih., Sect. 825. "No retrospective laws shall ever be enacted." Art. 16 Const. "The Sunreme Power of the King dom, in its exercise, is divided into the Executive, Legislative and Judicial; these shall always be preserved distinct." Art. 20, Const. Harrweitz, J.: The Act of 1870 has no express clause in favor of pending cases at Chambers, and the first point for consideration is whether it was the intention

of the Legislature that such cases should be decided under the old law according to the rules of procedure, and on the grounds of divorce which were in force when they were begun, or that all jurisdiction over those cases at Chambers is taken away, requiring them to be dismissed RIMMEL'S Lavendar Water, digitiled from Mit- and brought under the new Act. If the latter view be correct, then it is to be considered whether the Act is to that extent unconstitu-

tional and void. -The hardship of legislating parties out of procedure not existing when they brought their actions, is evitient. They lose in time and expense incurred on the strength of their reliance upon the laws. It is claimed that no person has a right to expect the tribunals or rules of procedure which exist at the time when he brings an action, to continue until his cases are decided. This may be admitted as sound doctrine, provided a competent tribunal be furnished to decide the actions brought before the change in the law and that the change in the procedure do not destroy or materially affect the right of action or ground of defence in actions previously comwhich impair the obligation of previous contracts, or affect the decision of pending cases. Statutes of limitation, Bankruptcy Acts, laws making parties witnesses in their own cases, abolishing old and creating new tribunals, or requiring sctions to be brought in different form, have given emment counsel, and opinions of Courts of disthus presented appear to be irrecopcilable with each other, but I have failed to find any decision that a clear statute remedy can be taken from any party in a pending case without some preterms, makes it impossible for the divorce to be from discovery of the offence, has now expired. previous law.

The first rule which applies in the construction of Statutes is, that they are not to be construed so as to affect pending cases and cause hardship to innocent parties, unless their terms

entered, &c. The remainder of that Section regreat deal of cost and charge in proceeding. They fers only to cases so entered, and to divorce procertainly meant future actions." The foregoing cases, July 6, 1870, alleging adultery of the wife. Un- 3 provides that all proceedings for divorce shall true spirit of the English law on the subject. ceedings before the Supreme Court. So Section and others cited in them, present it is believed the be commenced by libel, &c., and the remainder The following decisions were made in New Hampshire under a constitutional clause probibiting retrospective laws: Wourd es. Winnick, J N. H., 447. An Act repealing a statute of limitations does not affect pending cases. "It is not within the constitutional competency of the legislature to annul by statute any legal ground on which a pending action founded, or to create any new bar by which suit an

of the Act, unless in the repealing clause in Section 12, applies expressly to libels so instituted before the Supreme Court, and not to previous cases begun at Chambers. In view of the express terms of the Act, and of the general provisions of the Civil Code, saving the rights of parties in pending suits, I am clearly of the action may be defeated." So Bow es. Morris, 4 N. opinion that this Act was intended to be pros-H. 19, where the Court says, "it seems to us much pective. In reading the clause which repeals "all too clear to need any further elucidation, that a law divesting the defendant of this right (to a forfeiture. Acts authorizing divorce cases to be heard at by the plaintiff) must be deemed a retrospective law Chambers, and all Acts and parts of Acts inconfor the decision of a cause." Pickeringes. Pickering. sistent" therewith, my inference is not that the Legislature thereby intended to cut off the rights that it was deemed that the Civil Code fully saved their rights. I have no hesitation in de-

Supreme Court of the Hawnlian will be seen that its first section merely enum-

erates causes of divorce, the same as under the

previous law. Section 2 provides that the Su-

preme Court shall exercise jurisdiction in cases

on Onhu, and that all such cases shall be regularly

19 N. H., 595. An Act allowing a new mode of de fence does not apply to a pending suit. " Upon the of parties in pending cases, but on the contrary, commencement of this suit certain rules of pleading obtained, and it must be held that certain rights thereunder then arose as well to the plaintiff as the claring this to be the correct view, in the present detendant." Willard et. Harrey, 24 N. H., 353. A case, where the new Act would destroy the right statute is not unconstitutional which places a limit of twenty years within which actions of debt may be brought on judgments personally obtained. Rich es. But if it were held that this Act in fact Flamiers, 39 N. H. So of a law making parties to repeals all the previous Statutes in favor of

pending cases, then such repeal, as far as it

destroys the present libellant's right of actionis opposed to the spirit and letter of the Constitation, which declares that "no retrospective right, either of action or defence, it is unconstitulaw shall be enacted." As for the argument that tional and void." In Rich on Floriders, the Court parties have no right to any peculiar form of remedy, or to the continuance of any particular tribunal, it may be considered in cases where it applies. In this case, it is enough to say, that all remedy would be destroyed, and that the tribunal before which it was brought is not abolished. The Justices of this Court still sit at | jug a previous Act and all acts inconsistent therewith Chambers, but their jurisdiction over divorce causes is for the future transferred to the Court | pending case, inasmuch as the Statutes declared (as in term time. If an Act which destroys the right of action of parties in Court, depriving them of their remedy and furnishing no other in its place, is not retrospective legislation, in its most odious form, in a civil cause, I am at a loss to know what would be a retrospective law. Nay, more, what would this be, but assumption limits and furnishing a defence in actions against by the Legislature of judidcial functions, to de- sheriffs for escapes, is no defense to a prior action for cide causes before the Courts? Would the case | the escape of a prisoner, although he had afterwards be any stronger if the Legislature should enact that all actions pending in Courts should be dismissed unless brought within six months after the right of action accrued, or that in no pending case should any statute of limitation be pleaded in defence? I can take no other view than this, unjustly. It would make it defeat a suit already comunless that legal securities for "life, liberty and meaced upon a right already vested, and this would

sense of justice forbids me to suppose they in- Stall 9 Barb., 485, Johnson J.: "The remedy is the tended to destroy or impair any right in pending | power and the means given either in the contract itsuits. stitutional questions, I can only say that the case presents the points, and that I-donbt the possibility of making the fundamental law too clear and imperative. I have appended a note of ligation and the right to enforce it remain essentially

as laid down by all writers on jurisprudence, are

mere fictions of the mind, which Judges or

Legislatures may set at naught as they like.

cases on laws which affect the remedy. The majority of the Court do not give any | Overclembash vs. Danks, 1 Den. 131. An Act exemptopinion on the Constitutionality of the Act (as | ing property from execution cannot affect an existing affecting this case,) as in their view it is unnecessary by reason of its prospective nature, under the provisions of the Civil Code concerning

pending suits. The judgment of the Court is, that the exceptween the obligation of the contract and the remedy tions are sustained, and the cause remanded for to enforce performance. In many cases this distinct

W. C. Jones for the Libellant. S. B. Dole for the Libeliee

[Note.-The following are the decisions in England where Parliament is supreme : Moon vo. Durden, 2 previous case, on the ground mainly that imprison-Erek., (W. H. d. G.,) 41. An Act providing that no suit shall be brought or muintained for the recovery of any sum alleged to be won as a distinction however is not denied, between Acts wager was held not to defeat an action already which change the form of the remedy and those commenced. Barons Parke and Alderson both ex- which destroy all remedy. Bay vs. Gage, 36 Barb. pressed their opinions in this case, the former using 447, (1862.) An Act allowing new trials in judgthe following words: "It seems a strong thing to ments on a verdict was amended by striking out the Court and requiring them to commence their hold that the legislature could have meant that a words "on a verdict." Held that the amendment suits anew in another tribunal, and by rules of party who under a contract made prior to the act did not affect a prior judgment by a referee. had as perfect a title to recover a sum of money, as he had to any of his personal property, should be of the United States: totally deprived of it without compensation. It is a still stronger thing to suppose that if he has already laws making valid a void contract are not une commenced an action with an undoubted right to re- tional as impulring the obligation of contracts, as the cover his debt and costs, he should not only forfeit | Constitution does not prohibit reprospective laws or both, but also be liable to pay the costs of his adver- the exercise of judicial functions by a State legislasary by being obliged to discontinue." Wright ex. ture. So Baltimore and Susquehanna H. B. vs. Nes-Hale, 6 Eark., (H. & N.,) 230. A statute giving the bit, 10 How. 434. Johnson J., while assenting to the Court power to deny costs to a plaintiff, applies to a judgment on other grounds condemns in strong terms pending case. The judges there rest their decision, the reasons given in its support, as "advancing the largely on the fact that if wrong, the higher Court will correct it, except Baron Wilde, who says : "The acts which bear upon individual rights and liabilirule is that when a new enactment deals with rights | ties." of action, unless it is so expressed in the Act, an exmenced. There are many decisions of great sting right of action is not taken away. But where of sale mortgage valid according to the laws when interest in the United States concerning laws | the enactment deals with procedure only, unless the | it was given, prohibiting mortgage sales for less than contrary is expressed, the enactment applies to all actions whether commenced before or after the passing at as applied to prior mortgages, by impairing the of the Act." It is noticeable that Moon vs. Burden is not referred to in this case, but the aginion is strong enough to decide the case at har. Kimberley security for costs in order to enable plaintiffs to con-

ce. Droper, 3, Q. B. 162, (1868.) A statute requiring rise to numerous suits in which arguments of dust actions in a Supreme Court applies to a pending case. All the judges in that case express doubts of substantial difference between a retrospective law detinguished ability, have illustrated questions like | the decision, which is mainly based on the authority that now before us. The cases on some points of the previous decision of Wright vs. Hale, but both cases go only to the point of costs. Pardo vs. Bingham, 4 Chancery 735, (1869.) An action for debts contracted in Venezuela before July 1846, although at that date the Statute of six years' limitation for bringing suit excepted persons beyond to discharge debtors from prior cont tence of an equivalent, and that a right of action | seas, was dismissed on the ground that a subsequent in such a case can be directly destroyed. , Such, Act removed this exception. In this care Lord Chan- law, prohibiting property from being sold on excenhowever, is the result of the construction urged | cellor Hatherly while approving the decision in Moon by the learned compsel. The libellant alleges | vz. Durden, draws this distinction, that in the latter that the adultery was first known to him about case, "the person had astually brought an action be-Dec. 28, 1869. The Act of 1870, by its express | fore the statute passed, and to hold the action retro spective, would have deprived him of a right which he had actually acquired." De Wolf vs. Lindsell, 5 granted, inasmuch as the limitation of one year E_{T} , 212. A surely on a bond executed in 1854 is entitled to the benefit of an Act passed in 1856, giving There was no limitation of the kind under the him the benefit of any judgment obtained against the ling, 4 3. & R., 402, where a Statute providing that debtor. The Master of the Rolls, Lord Romilly here said that "The Act in question is not what is com- veyance, &c., by the warrantee, if the actual settler monly called retrospective; it was not intended for example, to apply to actions going an at the time when provisions of this Act." was held not to affect an acit was passed." Couch so. Jeffreys, 4 Burr., 2480. tion brought before its passage. Tilghman, C. J., An Act providing that if certain stamp duties should says: "It must not be supposed that the Legislature are so explicit that no other construction can be paid by a certain date, "the person who had in- meant to do injustice, and what but injustice would curred the penalty by the omission shall be discharg- it be, to subject a man to the loss of his action, and a time, just as the experience necessary to com-In looking at the terms of the Act of 1870, it ed of and from the same penalty," does not discharge the costs of suit by a retrorpactive law, although at duct it properly has been acquired."

Hawaiian Gazeite

Space Research in | 1 w, | 1 m | 1 m, | 2 m, | 6 m, | 12 m.

the time when be commenced his suit he was entitled " Could it then be anything but rank injustice, to compel a plaintiff prosecuting those rights which the law recognized as affording a good cause of action, to declar, pay cests, and begin again, when those costs were incurred at a time when he was in no di-

fault "" In Maine it was held that the Legislature could legally pass an Act requiring actions to recover the penalty on bunds to be in the form of trespans on the case instead of debt, as was fermerly done by common law, and that the Act required the dismissal of pending actions of debt. The effect of this decision may have been to give a creditor no remedy to enforce his contract, inasmuch as trusting to the Shariff's bond, he bud taken no steps to enforce his contract against the debtor, who meanwhile may have become insolvent, or whose property may have gone to satisfy other debts. Such a case of retrospective legislation is hardly to be regarded as a

precedent worthy or imitation. The following are views and decisions of the Supreme Court of Massachusetts: A statute of limitations may affect a pending suit. Becom se, Collember, & Muss., 309, Parons C. J., saying : " The demandant has not contested the equatitutionality of this statute so far as may affect actions sued after its passage but denies it as affecting actions pending at the time. We see no ground for this distinction : and if it were competent for the Legislature to make these provisions to affect actions after to be common the same provisions might apply with equal authority to actions then pending. But we give no opinion as to the general constitutionality of this statute." Springfield vs. Hampden, 6 Fick, 501. A statute outhorizing Commissioners of Highways to lay out reads may be repealed, and the repeal prevents the Commissioner from going on to decide any questious pending at the time. The Court there declare that the Legislature "may transfer jurisdiction from one tri banal to another. If there is a rested right, it is not invaded by the repeal of the Act, which created it, for the new Statute makes sufficient provision for all cases under the former Statute." Surper vs. Hon eroft, 21 Peck, 211. An Act depriving a plaintiff of costs, unless to recover a certain num, applies only to cases brought after the Act is parsed. So Buttles

under which a penalty was incurred, does not affect a re, Fobes, 18 Pink, 502. Wright vs. Oakly, 5 Met. 401. A Statute that the limitation of time for bringdoes our Civil Code) that the repeal of an Act shall ing actions does not apply where the debtor is out of affect no pending suit, which was the rule which the the State, is no bar to a provious action. The Court legislature meant should apply in all general repeals. there (Shaw, C. J.,) say that " although it can not be New York has no constitutional provision against said in technical strictness that a man has a vested ctive laws, but its Court hold that they are right to plead the Statute of limitations, so that it void on principles of universal jurisprudence. Dash could not be taken away by express Act of the Logiser. Van Kleeck, 7 Johns, 502. An Act enlarging jail lature, yet we are of opinion that the Legislature did not intend to take away such right." King as. Tirrell, 2 Groy, 331. A Statute of limitations of action against executors does not apply to those who gave bonds be returned. The Court were divided in that decision, fore its passage, quoting the words of the Court in but the weight of Chancellor Kent's opinion is in its Brigham ve. Rigelow, 12 Met., 273, that "if the Legisisture should declare that a period already elapsed " The very essence of a new law is a rule for future should bar an action, this would be under color of cases. The construction here contended for on the regulating, arbitrarily to take away all remedy . part of the defendant would make the statute operate and would be a mere abuse of power not to be anticipated from any Legislature." A Statute curing defects of jurisdiction in cases pending in a lower property," whether provided by Statute, by the | be punishing an innecent party with costs, as well as Court after a decision in the Suprema Court against Constitution, or by the general principles of law divesting him of a right previously acquired under the jurisdiction is invalid. Decay or Matters, I the existing law. Nothing could be more alarming Allen, 379, where Bigolow, C. J., says: "If the than such a subversion of principle. It is a principle practical operation of a Statute is to determine adin the English common law, as ancient as the law itversary mits pending between party and party by self, that a statute even of its omnipotent parliament substituting in the place of the well settled rules of is not to have a retrospective effect." James ex. law the arbitrary will of the Legislature, and thereby controlling the action of the tribinnal before which suits are pending, no one can loubt that it would be reif or by the law of the land to the other party to an unanthorized not of legislation, because it directly enforce the failllment of the obligation when it is broken. The lagislature cannot deprive a party of the judiciary. * * The Legislature have no this right or of the means to enforce it, but it may power to interfere with this jurisdiction in such manundoubtedly change time, and made and process ner as to change the decisions of cases pending before and forum at its pleasure, so that the binding ob-Courts." " Laws should be construed as prospective and not retrospective, unless they are expressly made

> still pending." Broom's Loud Maxing 69 The whole subject is fully considered in Conley's Constitutional Limitations, p. 200, and is thus sumpractical purposes, the Legislature might just as well med up: "We think investigation will show that a party has no vested right in a defence based on an

applicable to past transactions and to such as are

informality not affecting his substantial interests. There is no doubt of the right of a Legislature to make laws which reach back to and modify the effect of prior transactions, provided retransactive laws are not forbidden. * But legislation of trolling effect. Rut experience has proved that laws this sort is exceedingly hable to abuse, and it is a which in form go only to the remedy may have the sound rule of construction to give a Statute a prospractical effect of pullifying the contract." Morse pective operation only unless its turms abow a legisss. Goeld, H. 11 S. 283. This case overrules the ative intent that it should have a retrospective effect.

* A retrospective Statute curing defects in legal ment for debt, or other statute means of enfercing a arities only, and do not extend to matters of jurisdiction, is not void on Constitutional grounds," Le., as impairing the obligation of contracts, or being or

THE AUSTRALIAN STRAM LINE-Considerable

uncertainty seemed to exist in the colonies on the

departure of the last steamer for this port, regarding the future arrangements for the service. The Sychoy Mail, of a late infue, considers it unlikely that the Americans will run their large steamers without a subsidy, and that the Bill, though recommended by a committee, had not at our last advices passed through Congress. Even when it has passed, the Bill is so constructed that it will not take effect till the non-American Pacific communities grant a subsidy equal in amount to that of the United States, and to get this will require a great deal of negotiation. Moreover, it is scarcely likely that, so far as this colony is concerned, the American rate of subsidy will be granted, unless it could be shown that their large and expensive boats could alone do the work satstactorily. So far, however, as experience has gone at present, it is in favor of the colonial boats, seeing that the trip from the Sandwick Islands to San Francisco, which has been carried out by American versels, has been the part least entisfactorily performed. Hr. H. H. Hall has offered to run a four-weekly mail service direct from Sydney to San Francisco, via the Filia, for the sum of £45,000 a year, and the three vessels belonging to the Australian Steam Navigation Co., namely, the Wongs Wongs, the City of Melbourne, and the City of Adelaide, are demonstrably capable of making the trip each way in thirty days, and therefore, of assuring a mail service between Sydney and London of not more than forty-six days. With this offer before them, Government is not likely to give more than that amount to any foreign company. The Queensland Government has already intimated its willlogness to contribute £10,000 a year to such a service, and this would reduce the responsibility of this colony to £35,000. Victoria would probably contribute comething, which would make the burden still lighter; and it remains for the Government to determine whether it will acept the offer made. It lies in our power to scure the service, not only for Australia, but or Bydney, and the opportunity is one which, I thrown away, may never again be presented. It would

be a great pity to see the service dop, even for